

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

USA,

Plaintiff,

v.

ELIZABETH A. HOLMES and RAMESH
"SUNNY" BALWANI,

Defendants.

Case No. [5:18-cr-00258-EJD](#)

**ORDER RE REVIEW OF AGENT
NOTES**

Re: Dkt. No. 89

This order addresses the notes of witness interviews conducted by FBI, USPIS, and/or FDA-CI agents that the Prosecution has made available for Defendants' review. Dkt. No. 89 at 4, 7-8. During the hearing on June 28, 2019, counsel for the Prosecution described the Prosecution's plan for these notes: "[A]s to agent notes, for example, FBI agent notes, postal inspector agent notes, the government's plan and the offer to the Defense is to make those available for the Defense's review. The Defense can then bring to our attention any material from those notes that they believe is *Brady*, and then we can talk about production." June 18, 2019 Hearing Tr. at 29:16-21. On July 9, 2019, the Prosecution made the notes available for Defendants' in-person review at the U.S. Attorney's office; the Prosecution has also represented that it will make available any additional notes generated by the Prosecution. Dkt. No. 89 at 4-5, 7-8.

Defendants ask the Court to order the Prosecution to provide them with hard copies of the notes that they can review away from the U.S. Attorney's offices. Defendants represent that the notes are quite dense and that their review requires considerable time. *Id.* at 7-8. Conducting their review at the U.S. Attorney's offices is an onerous burden. *Id.* Defendants also argue that, under the current protocol, they have to identify to the Prosecution which notes contain *Brady* material.


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Id. They contend that this identification discloses attorney work product to the Prosecution. *Id.* At the July 17, 2019 hearing, the Prosecution expressed concerns with relinquishing custody of the notes due to their sensitive nature. July 17, 2019 Hearing Tr. at 43:17-46:19.

The Prosecution's concerns can be allayed through a protective order governing Defendant's receipt, handling, and use of the notes. The Court orders the parties to meet and confer to prepare such a stipulated protective order. Once this stipulated protective order has been filed with the Court, the Prosecution shall provide hard copies of the notes to each Defendant.

IT IS SO ORDERED.

Dated: July 22, 2019



EDWARD J. DAVILA
United States District Judge

United States District Court
Northern District of California